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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,775

01/12/2004

Michael Ronald Miller

140525

1774

23413 7590 12/31/2008
CANTOR COLBURN, LLP
20 Church Street
22nd Floor
Hartford, CT 06103

EXAMINER

RAMIREZ, JOHN FERNANDO

ART UNIT

PAPER NUMBER

3737

NOTIFICATION DATE

DELIVERY MODE

12/31/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/707,775

Applicant(s)

MILLER ET AL.

Examiner

JOHN F. RAMIREZ

Art Unit

3737

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 21 and 22.
Claim(s) objected to: none.
Claim(s) rejected: 1-4, 7-9 and 11-18.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768

/John F Ramirez/
Examiner, Art Unit 3737

Continuation of 11. does NOT place the application in condition for allowance because: In relation to applicant's arguments in the response "to final action". The examiner has carefully considered all the arguments presented by applicant. However, the examiner respectfully disagrees with applicant's assumptions. The applicant states on pages 8-12, that the 103(a) obviousness rejection of claims 1, 6, 9 and 14 using Ariav et al. in view of Bowers is improper as the references fail to teach or suggest every element of the instant invention. Applicant's attention is directed to the final rejection of the claims in question dated 10/31/08 and is repeated again.

Ariav et al. discloses an application of a sensor attached to an elastic band useful for X-ray imaging (paragraph 0061 and see figure 5) designed to be placed on the chest of a person to measure or detect the respiration or cardiac cycle rate of the person (see paragraphs 0160, 0162, 0080, 0081). Ariav et al. does not explicitly teach that the plastic cord or elastic band being substantially transparent to x-rays, a sensor coupled to an end of the plastic cord, the end of the plastic cord being configured to be disposed away from the chest of the person, and the sensor generating a measurement signal indicative of an amount of displacement of the plastic cord during respiration by the person. In the same field of endeavor Bowers discloses a sensor that has a PVDF transducer film attached substantially along a polyethylene spiral cord device with separate and independent sensing elements which is particularly adapted to monitor respiration or diaphragmatic effort around the chest generating an output signal (col. 4, lines 12-40, col. 1, lines 5-12, see figure 1a). Additionally, in response to applicant's arguments, that the sensor is coupled to an end of the plastic cord, and the end of the plastic cord being configured to be disposed away from the chest of the person is conventional in the art as evidenced by the Bowers patent.

Furthermore, in Figures 2, 3 and 4, illustrate the conventionality of the sensor is coupled to an end of the plastic cord. Additionally, the specification in column 5, lines 30-55, and in column 5, lines 7-29), expressly discloses a sensor that is coupled to an end of the plastic cord.

Also, in Figures 1a and 1b, illustrate the conventionality of the end of the plastic cord being configured to be disposed away from the chest of the person. In the specifications in column 4, lines 52-64, expressly discloses the end (12) of the plastic cord being configured to be disposed away from the chest of the person. As it can be seen from Figure 1a, the end (12) of the plastic cord (10) is disposed away from the chest. The position of the chest is either on the upper or lower portion of the spiral cord. Based on the above observations, for a person of ordinary skill in the art, modifying the device disclosed by Ariav et al., with the above discussed enhancements would have been considered obvious because such modifications would have a great effect in minimizing artifacts and interference in the recording of the signal by the sensing element.